

The Honorable Marsha J. Pechman

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON AT SEATTLE**

RYAN KARNOSKI, et al.,

*Plaintiffs,*

v.

DONALD J. TRUMP, in his official capacity as  
President of the United States, et al.,

*Defendants.*

Case No. 2:17-cv-01297-MJP

**DECLARATION OF BRAD R.  
CARSON IN SUPPORT OF  
PLAINTIFFS' MOTION FOR  
PRELIMINARY INJUNCTION**

NOTE ON MOTION CALENDAR:  
October 6, 2017  
ORAL ARGUMENT REQUESTED

I, Brad R. Carson, declare as follows:

1. I served as the Acting Under Secretary of Defense for Personnel and Readiness ("USD P&R") from April 2, 2015 to April 8, 2016. In that capacity, and at the direction of the Secretary of Defense, I led a group of senior personnel drawn from all of the armed services to develop, over many months of information collection and analysis, a Department-wide policy regarding service by transgender people, all as more fully described below.

**PROFESSIONAL BACKGROUND**

2. I attended Baylor University and obtained an undergraduate degree in history in 1989. After college, I attended Trinity College in Oxford, England on a Rhodes Scholarship and earned a Master's degree in Politics, Philosophy, and Economics. When I returned to the United States, I attended the University of Oklahoma College of Law, graduating with a law degree in

1 1994.

2 3. After I graduated law school, I practiced as an attorney at the law firm Crowe &  
3 Dunlevy. From 1997 to 1998 I served as a White House Fellow, where I worked as a Special  
4 Assistant to the Secretary of Defense. From 2001 to 2005, I served in Congress as the  
5 Representative for the State of Oklahoma's 2nd District.

6 4. In addition to my civilian career, I am also a commissioned officer in the United  
7 States Navy Reserve. I currently serve in the Individual Ready Reserve. I deployed to Iraq in  
8 2008 as Officer-in-Charge of intelligence teams embedded with the U.S. Army's 84th Explosive  
9 Ordnance Disposal Battalion. In Iraq, our teams were responsible for investigation of activities  
10 relating to improvised explosive devices and the smuggling of weapons and explosives. For my  
11 service in Iraq, I was awarded the Bronze Star Medal and other awards.

12 5. I have held several leadership positions within the Department of Defense  
13 ("DoD"). In 2011, I was nominated by the President to serve as General Counsel to the United  
14 States Army and unanimously confirmed by the U.S. Senate. As General Counsel, my duties  
15 included providing legal advice to the Secretary, Under Secretary, and Assistant Secretaries of  
16 the Army regarding the regulation and operation of the U.S. Army. I also assisted in the  
17 supervision of the Office of the Judge Advocate General. I served as General Counsel to the  
18 United States Army until March 2014.

19 6. In late 2013, while serving in that position, I was nominated by the President to  
20 serve as Under Secretary of the Army. I was unanimously confirmed by the U.S. Senate in  
21 February 2014 and sworn in on March 27, 2014. As Under Secretary of the Army, I was the  
22 second ranking civilian official in the Department of the Army. My responsibilities included the  
23 welfare of roughly 1.4 million active and reserve soldiers and other Army personnel, as well as a  
24 variety of matters relating to Army readiness, including oversight of installation management  
25 and weapons and equipment procurement. With the assistance of two Deputy Under Secretaries,  
26 I directly supervised the Assistant Secretaries of the Army for Manpower and Reserve Affairs;  
27 Acquisition, Logistics and Technology; Financial Management and Comptroller; Installations,  
28 Energy and Environment; and Civil Works. My responsibilities involved the management and

1 allocation of an annual budget amounting to almost \$150 billion.

2 7. I was appointed by the President to serve as acting USD P&R in April 2015. In  
3 that capacity, I functioned as the principal staff assistant and advisor to the Secretary and Deputy  
4 Secretary of Defense for Total Force Management with respect to readiness; National Guard and  
5 Reserve component affairs; health affairs; training; and personnel requirements and  
6 management, including equal opportunity, morale, welfare, recreation, and quality of life  
7 matters. My responsibilities over these matters extended to more than 2.5 million military  
8 personnel.

9 **DEVELOPMENT OF POLICY REGARDING TRANSGENDER SERVICE MEMBERS**

10 8. On July 28, 2015, then-Secretary of Defense Ashton B. Carter ordered me, in my  
11 capacity as USD P&R, to convene a working group to formulate policy options for DoD  
12 regarding transgender service members (the "Working Group"). Secretary Carter ordered the  
13 Working Group to present its recommendations within 180 days. In the interim, transgender  
14 service members were not to be discharged or denied reenlistment or continuation of service on  
15 the basis of gender identity without my personal approval. A true and accurate copy of the July  
16 28, 2015 order is attached hereto as Exhibit A.

17 9. The Working Group included roughly twenty-five members. Each branch of  
18 military service was represented by a senior uniformed officer (generally a three-star admiral or  
19 general), a senior civilian official, and various staff members. The Surgeons General and senior  
20 representatives of the Chaplains for each branch of service also attended the Working Group  
21 meetings.

22 10. The Working Group formulated its recommendations by collecting and  
23 considering evidence from a variety of sources, including a careful review of all available  
24 scholarly evidence and consultations with medical experts, personnel experts, readiness experts,  
25 health insurance companies, civilian employers, and commanders whose units included  
26 transgender service members.

27 **THE FINDINGS OF THE RAND REPORT**

28 11. On behalf of the Working Group, I requested that RAND, a nonprofit research

1 institution that provides research and analysis to the Armed Services, complete a comprehensive  
2 study of the health care needs of transgender people, including potential health care utilization  
3 and costs, and to assess whether allowing transgender service members to serve openly would  
4 affect readiness.

5 12. In 2016, RAND presented the results of its exhaustive study in a report entitled  
6 Assessing the Implications of Allowing Transgender Personnel to Serve Openly (“RAND  
7 Report”), a true and accurate copy of which is attached as Exhibit B.

8 13. The RAND Report explained that according to the American Psychiatric  
9 Association, the term transgender refers to “the broad spectrum of individuals who identify with  
10 a gender different from their natal sex.” The RAND Report also explained that “transgender  
11 status alone does not constitute a medical condition,” and that “only transgender individuals who  
12 experience significant related distress are considered to have a medical condition called gender  
13 dysphoria (GD).” For those individuals, the recognized standard of care includes some  
14 combination of psychosocial, pharmacological, and/or surgical care. “Not all patients seek all  
15 forms of care.” “While one or more of these types of treatments may be medically necessary for  
16 some transgender individuals with GD, the course of treatment varies and must be determined on  
17 an individual basis by patients and clinicians.”

18 14. The RAND Report evaluated the capacity of the military health system (MHS) to  
19 provide necessary care for transgender service members. The RAND Report determined that  
20 necessary psychotherapeutic and pharmacological care are available and regularly provided  
21 through the MHS, and that surgical procedures “quite similar to those used for gender transition  
22 are already performed within the MHS for other clinical indications.” In particular, the MHS  
23 already performs reconstructive surgeries on patients who have been injured or wounded in  
24 combat. “The skills and competencies required to perform these procedures on transgender  
25 patients are often identical or overlapping.” In addition, the RAND Report noted that  
26 “performing these surgeries on transgender patients may help maintain a vitally important skill  
27 required of military surgeons to effectively treat combat injuries.”

28 15. The RAND Report also examined all available actuarial data to determine how

1 many transgender service members are likely to seek gender transition-related medical treatment.  
2 The RAND Report concluded that “we expect annual gender transition-related health care to be  
3 an extremely small part of overall health care provided to the AC [Active Component]  
4 population.”

5 16. The RAND Report similarly concluded that the cost of extending health care  
6 coverage for gender transition-related treatments is expected to be “an exceedingly small  
7 proportion of DoD's overall health care expenditure.”

8 17. The RAND Report found no evidence that allowing transgender people to serve  
9 openly would negatively impact unit cohesion, operational effectiveness, or readiness.

10 18. The RAND Report found that the estimated loss of days available for deployment  
11 due to transition-related treatments “is negligible.” Based on estimates assuming the highest  
12 utilization rates, it concluded that the number of nondeployable man-years due to gender  
13 transition-related treatments would constitute 0.0015 percent of all available deployable labor-  
14 years across both the Active Component and Select Reserves.

15 19. The RAND Report also found no evidence that permitting openly transgender  
16 people to serve in the military would disrupt unit cohesion. The RAND Report noted that while  
17 similar concerns were raised preceding policy changes permitting open service by gay and  
18 lesbian personnel and allowing women to serve in ground combat positions, those concerns  
19 proved to be unfounded. The RAND Report found no evidence to expect a different outcome for  
20 open service by transgender persons.

21 20. The RAND Report examined the experience of eighteen other countries that  
22 permit open service by transgender personnel—including Israel, Australia, the United Kingdom,  
23 and Canada. The Report found that all of the available research revealed no negative effect on  
24 cohesion, operational effectiveness, or readiness. Some commanders reported that “increases in  
25 diversity led to increases in readiness and performance.”

26 21. The Rand Report also identified significant costs associated with separation and a  
27 ban on open service, including “the discharge of personnel with valuable skills who are  
28 otherwise qualified.”

**ISSUES CONSIDERED BY THE WORKING GROUP**

22. The Working Group sought to identify and address all relevant issues relating to service by openly transgender persons, including deployability. In addition to taking into consideration the conclusions of the RAND Report, the Working Group discussed that while some transgender service members might not be deployable for short periods of time due to their treatment, this is not unusual, as it is common for service members to be non-deployable for periods of time due to medical conditions such as pregnancy, orthopedic injuries, obstructive sleep apnea, appendicitis, gall bladder disease, infectious disease, and myriad other conditions. For example, the RAND Report estimated that at the time of the report, 14 percent of the active Army personnel—or 50,000 active duty soldiers—were ineligible to deploy for legal, medical, or administrative reasons.

23. The Working Group also addressed the psychological health and stability of transgender people. In addition to taking into account the conclusions of the RAND Report, the Working Group concluded, based on discussions with medical experts and others, that being transgender is not a psychological disorder. While some transgender people experience gender dysphoria, that condition is resolved with appropriate medical care. In addition, the Working Group noted the positive track record of transgender people in civilian employment, as well as the positive experiences of commanders with transgender service members in their units.

24. The Working Group also concluded that transgender service members would have ready access to any relevant necessary medication while deployed in combat settings. It determined that military policy and practice allows service members to use a range of medications, including hormones, while in such settings. The MHS has an effective system for distributing prescribed medications to deployed service members across the globe, including those in combat settings.

25. The Working Group also concluded that banning service by openly transgender persons would require the discharge of highly trained and experienced service members, leaving unexpected vacancies in operational units and requiring the expensive and time-consuming recruitment and training of replacement personnel.



1           26.     The Working Group also concluded that banning service by openly transgender  
2 persons would harm the military by excluding qualified individuals based on a characteristic  
3 with no relevance to a person's fitness to serve.

4           27.     I concluded my service as USD P&R on April 8, 2016. By that time, the Working  
5 Group was unanimously resolved that transgender personnel should be permitted to serve openly  
6 in the military.

#### 7                           **RECENT REVERSAL OF POLICY**

8           28.     On July 26, 2017, President Donald Trump issued a statement that transgender  
9 individuals will not be permitted to serve in any capacity in the Armed Forces. On August 25,  
10 2017, President Trump issued a memorandum to the Secretary of Defense and the Secretary of  
11 Homeland Security to reverse the policy adopted in June 2016 that permitted military service by  
12 openly transgender persons. That memorandum stated: "In my judgment, the previous  
13 Administration failed to identify a sufficient basis to conclude that terminating the Departments'  
14 longstanding policy and practice would not hinder military effectiveness and lethality, disrupt  
15 unit cohesion, or tax military resources, and there remain meaningful concerns that further study  
16 is needed to ensure that continued implementation of last year's policy change would not have  
17 those negative effects."

18           29.     President Trump's stated rationale for a ban on military service by openly  
19 transgender service members is unfounded and refuted by the comprehensive investigation and  
20 review performed by the Working Group.

21           30.     In addition to contravening the Working Group's conclusions and the exhaustive  
22 supporting evidence that was collected, I believe that prohibiting transgender individuals from  
23 serving openly in the military is harmful to the public interest for several reasons. My belief is  
24 based on my experience as USD P&R and in other leadership positions within DoD, and upon  
25 my active duty experience in Iraq.

26           31.     First, a prohibition on service by openly transgender individuals would degrade  
27 military readiness and capabilities. Many military units include transgender service members  
28 who are highly trained and skilled and who perform outstanding work. Separating these service

1 members will deprive our military and our country of their skills and talents.

2 32. Second, banning military service by openly transgender persons would impose  
3 significant costs that far outweigh the minimal cost of permitting them to serve. A study authored  
4 in August 2017 by the Palm Center and professors associated with the Naval Postgraduate  
5 School estimated that separating transgender service members currently serving in the military  
6 would cost \$960 million, based on the costs of recruiting and training replacements. A true and  
7 correct copy of the August 2017 Palm Center study is attached hereto at Exhibit C.

8 33. Third, the sudden and arbitrary reversal of the DoD policy allowing openly  
9 transgender personnel to serve will cause significant disruption and thereby undermine military  
10 readiness and lethality. This policy bait-and-switch, after many service members disclosed their  
11 transgender status in reliance on statements from the highest levels of the chain of command,  
12 conveys to service members that the military cannot be relied upon to follow its own rules or  
13 maintain consistent standards.

14 34. Fourth, in addition to the breach of transgender service members' trust resulting  
15 in the deprivation of their careers and livelihood, the President's policy reversal will cause other  
16 historically disadvantaged groups in the military, including women and gay and lesbian service  
17 members, to question whether their careers and ability to serve as equal members of the military  
18 may also be sacrificed.

19 35. Fifth, those serving in our Armed Forces are expected to perform difficult and  
20 dangerous work. The President's reversal of policy puts tremendous additional and unnecessary  
21 stress on transgender service members, their command leaders, and those with whom they serve.

22 36. In short, the President's reversal of the policy permitting military service by  
23 openly transgender individuals has had, and will continue to have, a deleterious effect on  
24 readiness, force morale, and trust in the chain of command in the Armed Services.


25 37. I have reviewed and am familiar with the declarations by my colleagues – Former  
26 Secretary of the Army Eric Fanning, Former Secretary of the Navy Raymond Mabus, Former  
27 Secretary of the Air Force Deborah Lee James, and Former Deputy Surgeon General Margaret  
28 Chamberlain Wilmoth – that were submitted in *Doe v. Trump*, Case Number 1:17-cv-01597



1 (District Court for the District of Columbia). I also submitted a declaration in that case. There is  
2 nothing in any of the declarations by my colleagues, filed in *Doe v. Trump*, with which I  
3 disagree.

4  
5 I declare under the penalty of perjury that the foregoing is true and correct.

6  
7 DATED: September 13, 2017

8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
  
Brad R. Carson

**CERTIFICATE OF SERVICE**

The undersigned certifies under penalty of perjury under the laws of the United States of America and the laws of the State of Washington that on September 14, 2017, I caused true and correct copies of the foregoing documents to be served by the method(s) listed below on the following interested parties:

**By Hand Delivery:**

US Attorney's Office  
700 Stewart St., Suite 5220  
Seattle, WA 98101-1271

**By Registered or Certified Mail:**

Attorney General of the United States  
U.S. Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530-0001

Department of Defense  
1400 Defense Pentagon  
Washington, DC 20301-1400

Secretary of Defense James N. Mattis  
1000 Defense Pentagon  
Washington, DC 20301-1000

President Donald J. Trump  
1600 Pennsylvania Ave. NW  
Washington, DC 20500

I hereby certify under the penalty of perjury that the foregoing is true and correct. Executed on September 14, 2017 at Seattle, Washington.

s/Rachel Horvitz

Rachel Horvitz, *Paralegal*